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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,521	03/22/2004	Alvin Kaplan	07670/100M667-US1	3379
7278	7590	03/09/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			MARSH, STEVEN M	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/807,521	KAPLAN, ALVIN	
	Examiner Steven M Marsh	Art Unit 3632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

#### **Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 10 December 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This is the second office action for U.S. Application 10/807,521 for a Hanger filed by Alvin Kaplan on March 22, 2004.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 11, Applicant claims a hanger and claims that "an article rolled around the shaft to form a cylinder", as part of the hanger. However, the specification identifies the article as a separate structure from the hanger and it is not clear how the article is part of the hanger when claim 1 claims a hanger "for a fabric article". This claim has not been searched on the merits.

### ***Claim Rejections - 35 USC § 102***

Claims 1, 2, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,673,835 to Kalat. Kalat discloses a hanger with a hanging element (54) disposed at the top end of a shaft (40 and 44) having a top and a bottom end. There is a ring-shaped support element (22 and 24) disposed on the bottom end of the shaft and extending outwardly therefrom to provide a support base. An article can be rolled around the shaft and the base can support an article in a vertical position. Claim 9

contains limitations to the article. However, because the article is not claimed, the limitations are not considered limiting to the hanger.

Claims 1, 3, 9, and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent D472,414S to Gilbert. Gilbert discloses a hanger with a hanging element (at the top of the stand in fig. 1) disposed at the top end of a shaft (between the disk at the bottom and the top of the stand) having a top and a bottom end. There is a solid disk (at the bottom of the stand) that is disposed at the bottom of the shaft and extends radially and outwardly therefrom to provide a support base. An article may be rolled around the shaft to form a cylinder and the base can support an article in a vertical position. Claim 9 contains limitations to the article. However, because the article is not claimed, the limitations are not considered limiting to the hanger.

Claims 1, 4-6, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 1,464,160 to Weyel. Weyel discloses a hanger with hanging element (10) disposed at the top end of a shaft (6) having a top and a bottom end. There is a support element (4) that is disposed at the bottom of the shaft and extends outwardly therefrom to provide a support base. The support element is pivotally connected to the shaft and the support element pivots between a first position, approximately parallel to the shaft, and a second position approximately perpendicular to the shaft. The support element also has a notch (at the end of 4) dimensioned to receive the shaft and there is a header element (2) that is rectangular in cross-section. An article may be rolled around the shaft to form a cylinder and the base can support an article in a vertical

position. Claims 6 and 9 contain limitations to the article. However, because the article is not claimed, the limitations are not considered limiting to the hanger.

Claims 1, 6, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,262,439 to Dinan et al. Dinan et al. discloses a hanging element (52) at the top of a shaft (20) having a top end and a bottom end, with a support element (12) disposed on the bottom end of the shaft and extending outwardly therefrom. An article can be rolled around the shaft and there is a header element (50) with a rectangular cross section disposed on the shaft. Claims 1 and 6 contain limitations to the article. However, because the article is not claimed, the limitations are not considered limiting to the hanger.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dinan et al. Dinan et al. does not disclose a header element with a trapezoidal cross section. However, Dinan does disclose that the header can in different configurations (col. 2, lines 64-68) and forming the header in a trapezoidal configuration is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention.

***Response to Arguments***

In response to applicant's arguments that Kalat does not disclose hanging a fabric article or that an article rolled around its shaft can be supported by ring (22); Gilbert does not teach one of ordinary skill in the art to hang the holder; Weyel does not teach a hanger for holding fabric or a notch dimensioned to receive the shaft; and Dinan does not disclose hanging a fabric; a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

The Examiner disagrees with Applicant's assertion that the strap is positively recited in claim 9. The strap is claimed as encircling the article, and the article is not positively recited in the claim. The Examiner also disagrees that the location of the header is positively claimed, as the article is not positively claimed, so any limitation referring to the location of the header with respect to the article has no patentable weight. The Examiner also disagrees that Dinan teaches away from rolling an article around the shaft. An article could be rolled around the shaft and articles could still be displayed on the shelves.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

*SMM*

Steven M. Marsh

March 3, 2005

*Ramón O. Ramírez*  
RAMÓN O. RAMÍREZ  
PRIMARY EXAMINER